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5 **THE HONORABLE THOMAS O. RICE**

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8 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON

9

10 **CHRISTI LYNN GALLOP and**
EDWARD ALAN MONK,

11

12 Plaintiffs,

13 v.

14

15 **RELIANCE STANDARD LIFE**
INSURANCE, THE MATRIX
COMPANIES, STANLEY
BASTIAN, et al.,

16 Defendants.

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18 NO. 4:18-cv-05185-TOR

19 WASHINGTON STATE
DEFENDANTS' MOTION
AND MEMORANDUM TO
DISMISS PURSUANT TO
12(b)(6) AND 12(b)(5)

20

21 **WITHOUT ORAL**
ARGUMENT
JANUARY 24, 2019
6:30 P.M.

22

23 Pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(5), the
Washington State Defendants move this Court for an order dismissing Plaintiff
Christi Lynn Gallup and Edward Allan Monk's claims against them in their
entirety.¹ The allegations fail to state a claim against the Washington State

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25 ¹ Defendants previously filed essentially the same motion in Benton County
26 Court, but the case was removed to this Court by the United States Attorney's
WASHINGTON STATE
DEFENDANTS' MOTION AND
MEMORANDUM TO DISMISS
PURSUANT TO 12(b)(6) AND 12(b)(5)

1 Defendants upon which relief can be granted. Even if a legally sufficient claim had
 2 been alleged, the individual defendants would be entitled to qualified immunity.
 3 Further, Plaintiffs did not comply with the tort claim requirements of
 4 RCW 4.92.110. Lastly, Plaintiffs have not served the Washington State Defendants
 5 in compliance with RCW 4.92.020 with the initial Complaint (filed 9/17/18) or the
 6 second Complaint² (hereinafter “Amended Complaint”) (filed 10/18/18).

7 **I. ARGUMENT**

8 **A. Plaintiffs Fail To State A Claim On Which Relief Can Be Granted.**

9 Plaintiffs’ claims are also subject to dismissal under Federal Rule of Civil
 10 Procedure 12(b)(6) for failure to state a claim. A complaint must contain “a short
 11 and plain statement of the claim showing that the pleader is entitled to relief.”
 12 Fed. R. Civ. P. 8(a)(2). Under Federal Rule of Civil Procedure 12(b)(6), a court
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14 _____
 15 Office prior to the motion being heard. Defendants are thus filing this updated
 16 motion that includes federal citations.

17 ² This second Complaint is 29 pages and is dated October 15, 2018. The
 18 Benton County Court Docket in the Oddessey Portal referred to this document as
 19 an Amended Complaint. Although the title in the caption of that document is
 20 simply “Complaint,” Washington State Defendants will refer to that document as
 21 the “Amended Complaint” given that it was listed that way on the Benton County
 22 Court Docket.

1 must dismiss the complaint if it “fail[s] to state a claim upon which relief can be
 2 granted.”

3 In deciding a Rule 12(b)(6) motion, the Court construes the complaint in
 4 the light most favorable to the plaintiff and draws all reasonable inferences in the
 5 plaintiff’s favor. *Ass’n for L.A. Deputy Sheriffs v. County of Los Angeles*,
 6 648 F.3d 986, 991 (9th Cir. 2011). Thus, a court must accept as true all factual
 7 allegations contained in the complaint. *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 8 (2009). However, a court may disregard legal conclusions couched as factual
 9 allegations. *See id.*

10 To survive a Rule 12(b)(6) motion, the complaint must contain “*some*
 11 viable legal theory” and provide “fair notice of what the claim is and the grounds
 12 upon which it rests.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 562 (2007)
 13 (internal quotation marks and ellipsis omitted). The complaint must contain
 14 “sufficient factual matter, accepted as true, to ‘state a claim to relief that is
 15 plausible on its face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at
 16 570). Thus, the complaint must be sufficiently specific to give notice of both the
 17 fact of the claim and the nature of the claim.

18 In the Amended Complaint, Plaintiffs make broad claims regarding a
 19 RICO enterprise engaged in a denial of benefits scheme. Amended Complaint
 20 at 2. Governor Jay Inslee and Attorney General Bob Ferguson are specifically
 21 named, and the Governor’s Office, the Attorney General’s Office, DSHS, DCYF,
 22 and the Office of Insurance Commissioner (OIC) are all generally alleged to be

1 involved in the “RICO enterprise” and are included as “Parties In Fact or After
 2 the Fact.” Amended Complaint at 3, 6. Plaintiffs also allege that the Attorney
 3 General and Governor were accessories after the fact in a scheme to defraud and
 4 deprive Plaintiffs of their property, freedom, and rights under color of law.
 5 Amended Complaint at 7. While there are general allegations of “multiple
 6 refusals or acts documented by many officials that have acted to supported [sic]
 7 the RICO crime syndicate goals” including “both the Governor and AG of
 8 Washington State,” Amended Complaint at 2, no such acts are specifically
 9 described. Governor Jay Inslee and Attorney General Bob Ferguson are also
 10 included in the list of “Documented Human Rights Violations In This Case.”
 11 Amended Complaint at 14. However, Plaintiffs’ Complaint does not contain
 12 specific facts regarding the conduct of either individual. It is not entirely clear
 13 whether any other individuals mentioned in the caption are alleged to be affiliated
 14 with the State.³

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³ For example, Plaintiffs’ first Complaint described Defendant Hunt as a
 18 “possible WA State DSHS employee.” Compliant at 92. However, the Amended
 19 Complaint does not include this description and states that “[t]he Hunt woman
 20 may be Leslie Gail McAnallen.” Amended Complaint at 17. Additionally, at this
 21 point none of the allegations regarding Defendant Hunt appear to relate to any
 22 conduct within the course and scope of employment with a state agency.

1 The Amended Complaint also includes allegations that the “OIC was
 2 involved in targeting Christi Gallup the victim of a fraudulent insurance denial
 3 of benefits scheme,” and that the “OIC actively engaged with the crime syndicate
 4 members running the RICO enterprise.” Amended Complaint at 2, 3. However,
 5 no specific details or actions are provided. Plaintiffs also allege a cause of action
 6 arising out of complaints made to the Office of the Insurance Commissioner and
 7 that the Governor, Attorney General, and Insurance Commissioner failed to
 8 “protect a known crime victim and protected adults from retaliation.” Amended
 9 Complaint at 12, 20.

10 None of these general allegations constitute a legally sufficient claim.
 11 There are no allegations of any specific actions taken by individuals or
 12 government agencies as a whole. To the extent that Plaintiffs allege that OIC or
 13 other state offices failed to take some action, the public duty doctrine generally
 14 protects government from liability for regulatory “acts of omission,” like where
 15 a program “failed to prevent” the harm which befell plaintiff. *See Coffel v.*
 16 *Clallam Cnty.*, 47 Wn. App. 397, 735 P.2d 686 (1983); *Robb v. City of Seattle*,
 17 176 Wn.2d 427, 432, 295 P.3d 212, 215 (2013); *Logan v. Weatherly*, 2006 WL
 18 1582379, at *4 (E.D. Wash. June 6, 2006). Since Plaintiffs’ Amended Complaint
 19 fails to state a claim upon which relief can be granted and fails to provide
 20 adequate notice of the nature of said claims, the claims against the Washington
 21 State Defendants should be dismissed.

1 **B. Washington State Defendants are Entitled To Qualified Immunity.**

2 Governor Jay Inslee and Attorney General Bob Ferguson are governmental
 3 officials who are entitled to qualified immunity when performing discretionary
 4 functions. *Friends of Moon Creek v. Diamond Lake Improvement, Ass'n, Inc.*,
 5 409 P.3d 1084, 1089 (Wash. Ct. App. 2018); *see also, Lassetter v. Brand*, 2011
 6 WL 4712188, at *2 (W.D. Wash. Oct. 4, 2011)(Attorney General protected from
 7 suit by prosecutorial immunity for discretionary charging decisions); *Willett v.*
 8 *Inslee*, 2014 WL 6473683, at *5 (E.D. Wash. Nov. 18, 2014)(“Governor has
 9 qualified immunity for his discretionary actions, such as enforcing the laws”).
 10 Although the allegations in the Amended Complaint are not specific, qualified
 11 immunity would apply to any discretionary actions taken by Governor Inslee or
 12 Attorney General Ferguson.

13 **C. Plaintiffs Did Not Comply With RCW 4.92.100.**

14 Before commencing suit against a state entity in Washington, a plaintiff is
 15 required to file a standard tort claim notice with the appropriate entity. “All claims
 16 against the state, or against the state’s officers, employees, or volunteers, acting in
 17 such capacity, for damages arising out of tortious conduct, must be presented to the
 18 office of risk management.” RCW 4.92.100. “No action subject to the claim filing
 19 requirements of RCW 4.92.100 shall be commenced against the state, or against
 20 any state officer, employee, or volunteer, acting in such capacity, for damages
 21 arising out of tortious conduct until sixty calendar days have elapsed after the claim

1 is presented to the office of risk management in the department of enterprise
 2 services.” RCW 4.92.110.

3 “The purpose of claim filing statutes is to allow government entities time to
 4 investigate, evaluate, and settle claims.” *Lee v. Metro. Parks Tacoma*, 183 Wn.
 5 App. 961, 968, 335 P.3d 1014 (2014) (internal quotation marks omitted).
 6 Substantial compliance with the relevant claim filing statute—meaning that the
 7 “statute has been followed sufficiently so as to carry out the intent for which the
 8 statute was adopted”—is sufficient. *Id.* at 967–68, 335 P.3d 1014. Failure to
 9 substantially comply with the statutory notice filing provisions deprives the court
 10 of subject matter jurisdiction, *Schoonover v. State*, 116 Wn. App. 171, 177, 64 P.3d
 11 677 (2003), and is grounds for dismissal, *Reyes v. City of Renton*, 121 Wn. App.
 12 498, 502, 86 P.3d 155 (2004); *see also, Matter of Det. of C.V.*, 428 P.3d 407 (Wash.
 13 Ct. App. 2018)(“Dismissal is the proper remedy for a substantive claim that does
 14 not comply with the procedural requirements of RCW 4.92.100 and
 15 RCW 4.92.110.”).

16 Plaintiffs filed the present litigation without filing a tort claim. After
 17 Defendants brought their initial motion to dismiss in state court, Mr. Monk did file
 18 a tort claim on November 9, 2018. However, this lawsuit is still not in compliance
 19 with RCW 4.92.110, since Plaintiffs filed the lawsuit before filing a tort claim rather
 20 than filing a claim and waiting the statutorily required sixty days. Since Plaintiffs
 21 did not comply with RCW 4.92.110, dismissal of their claims against the state
 22 entities is appropriate.

1 **D. The Action Against Washington State Defendants Should Be**
 2 **Dismissed Pursuant To 12(B)(5) For Insufficiency Of Process.**

3 Under RCW 4.92.020, serving the State in a civil action must be
 4 accomplished by service on the Attorney General or by leaving the summons and
 5 complaint in the Office of the Attorney General with an assistant attorney
 6 general. *Landreville v. Shoreline Community College District No. 7*, 53 Wn. App.
 7 330, 766 P.2d 1107 (1989). Additionally, service upon individual defendants
 8 must be made personally or through “abode service.” RCW 4.28.080(15);
 9 CR 4(d)(2). In this case, Plaintiff has not done either. The causes of action against
 10 the Washington State Defendants should be dismissed for insufficient process.

11 **II. CONCLUSION**

12 For the reasons discussed above, Defendants respectfully request this Court
 13 dismiss Plaintiffs’ claims against Washington State Defendants in their entirety.

14 DATED this 30th day of November, 2018.

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PROOF OF SERVICE

I certify that I electronically filed this document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 30th day of November, 2018.

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